

Decision **DRAFT DECISION OF ALJ PRESTIDGE** (Mailed 6/24/03)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking for the Purpose of Revising Certain Rules of Practice and Procedure to Implement Public Utilities Code Section 1708.5 (Petitions for Rulemaking).

Rulemaking 02-06-040  
(Filed June 27, 2002)

**DECISION RE-OPENING PROCEEDING AND APPROVING ADDITIONAL  
AMENDMENTS TO NEW RULE 14.7 REGARDING PETITIONS TO AMEND,  
ADOPT, OR REPEAL A REGULATION  
PURSUANT TO PUBLIC UTILITIES CODE SECTION 1708.5**

**1. Summary**

This decision amends Rule 14.7<sup>1</sup> regarding petitions to amend, adopt, or repeal a regulation pursuant to Public Utilities Code Section 1708.5 (Petitions)<sup>2</sup> to permit the filing of petitions related to our procedural Rules, as well as other Commission regulations. We also re-open this proceeding in order to consider this amendment to Rule 14.7.

**2. Background**

On June 27, 2002, the Commission adopted an Order Instituting Rulemaking (OIR), which proposed the adoption of new Rule 14.7 regarding

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<sup>1</sup> All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

<sup>2</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

Petitions to amend, adopt, or repeal a regulation pursuant to Section 1708.5, to be included in a new Article 3.5 regarding rulemaking in general. Rule 14.7 responds to the requirement of Section 1708.5 that the Commission amend its Rules to provide specific procedures for handling such petitions. After publishing the requisite Notice of Regulatory Action (Notice) in the California Regulatory Notice Bulletin on July 12, 2002, and receiving and responding to public comments on the proposed Rule, we adopted Decision (D.) 03-03-020, which added new Article 3.5 and Rule 14.7 to the Rules on March 13, 2003. We subsequently forwarded Article 3.5 and Rule 14.7 to the Office of Administrative Law (OAL) for approval pursuant to the Administrative Procedures Act (APA).<sup>3</sup> On June 5, 2003, we approved D.03-06-025, which closed this proceeding.

As previously adopted, Rule 14.7 allowed the public to petition the Commission to adopt, amend, or repeal a regulation that has general applicability and future effect,<sup>4</sup> but did not apply to proposed changes to our procedural Rules. We reasoned that since the Legislature intended the Commission to have authority to more precisely define “regulation” under Section 1708.5, we could exclude our procedural Rules from this definition in order to maintain a consistent set of procedures to govern Commission proceedings.

After submittal of Rule 14.7 to OAL for approval, we withdrew our request for OAL review in order to further consider whether, under Public Utilities Code

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<sup>3</sup> Govt. Code Section 11340 *et seq.*

<sup>4</sup> A regulation is generally applicable when it applies to an entire class of entities or activities over which the Commission has jurisdiction. A regulation has future effect when it applies to conduct in the future.

Section 1708.5, Rule 14.7 should permit the public to file petitions to adopt, amend, or repeal Commission procedural Rules.<sup>5</sup>

### 3. Discussion

We re-open this proceeding in order to consider whether to amend Rule 14.7 to permit the filing of petitions related to the Rules.

In 1999, the Legislature enacted Section 1708.5 through the adoption of Assembly Bill (AB) No. 301.<sup>6</sup> Although Section 1708.5 requires the Commission adopt Rules to permit interested persons to petition the Commission to adopt, amend, or repeal regulations, the statute does not define “regulation.” However, the legislative preamble to AB 301 indicates that the Legislature did not intend Section 1708.5 to apply to all Commission orders and decisions, but only to rules of general applicability and future effect, and intended the Commission to have authority to more precisely define “regulation” in order to implement Section 1708.5.<sup>7</sup>

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<sup>5</sup> Government Code Section 11349.3(c) permits administrative agencies to withdraw a proposed regulation from consideration by OAL and to later resubmit the regulation, provided that certain requirements are met.

<sup>6</sup> *See* Stats 1999, ch. 568, Section 2 (AB 301).

<sup>7</sup> Stats 1999, ch. 568, Section 1(b) provides:

(b) It is the further intent of the Legislature that the term “regulation,” as used in subdivision (a) of Section 1708.5 of the Public Utilities Code, not be construed to refer to all orders and decisions of the Public Utilities Commission, but, rather, be construed as a general reference of rules of general applicability and future effect. It is the intent of the Legislature that the Public Utilities Commission have the authority to define more precisely the term “regulation” for the purpose of Section 1708.5 of the Public Utilities Code.

We continue to think that the statute is directed primarily to proposals to change our regulatory programs, and our experience with petitions since Section 1708.5 became effective shows that parties who have petitioned under the statute have had our regulatory programs in mind. By the same token, however, this experience indicates that broadening Rule 14.7 to also allow petitions to change our procedural Rules would be unlikely to substantially increase the number of petitions and would enable us to conveniently consider proposed changes to those Rules where suggested by a petitioner.

We therefore amend Rule 14.7 to delete the last sentence of subsection (a) which states that: “This rule does not authorize petitions to adopt, amend, or repeal Commission Rules of Practice and Procedure,” as set forth in Appendix A.

#### **4. Public Review and Comment**

Since the Commission has previously complied with APA notice and comment procedures in adopting Rule 14.7, and the above amendment of Rule 14.7 is necessary in order to make Rule 14.7 consistent with Section 1708.5, the APA requires no further notice to the public or opportunity for public comments.

In addition, since the Commission has previously provided for public review and comment on this rulemaking pursuant to the APA, the otherwise applicable 30-day period for public review and comment under our Rules may be waived or reduced pursuant to Rule 77.7(f)(8). We therefore reduce the applicable Commission public review and comment period to 15 days. Comments are due on July 9, 2003. In order to give the public additional notice, we have posted a copy of this decision and Rule 14.7, as amended, on the Commission website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). No comments were filed.

## **5. Assignment of Proceeding**

Loretta M. Lynch is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Section 1708.5 does not define “regulation” and gives the Commission authority to more precisely define “regulation” as related to petitions under Section 1708.5.
2. The amendments to Rule 14.7 and Article 3.5 adopted in this decision have been previously served on the service list, published on the Commission website, and made subject to public comment for at least 15 days before our adoption of this decision.

### **Conclusions of Law**

1. Under Section 1708.5, the Commission may define “regulation” to permit the filing of petitions related to our procedural Rules in order to consider proposed Rule changes where suggested by a petitioner.
2. The Commission has complied with all procedural requirements for adoption of amendments to Rule 14.7, as set forth in Appendix A.

## **O R D E R**

### **IT IS ORDERED** that:

1. We re-open this proceeding in order to consider whether to amend Rule 14.7 to permit the filing of petitions related to the Rules.
2. Amendments to Rule 14.7(a), as stated in Appendix A, are adopted and added to the Commission’s Rules of Practice and Procedure.

3. The Executive Director and Chief Administrative Law Judge shall take all necessary action to submit amended Rule 14.7, as stated in Appendix A, to the Office of Administrative Law for review and approval pursuant to the Administrative Procedure Act.

4. The Executive Director and Chief Administrative Law Judge may make format changes as appropriate for printing Rule 14.7 and Article 3.5 in the California Code of Regulations.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX A

### **Article 3.5**

#### **14.7. (Rule 14.7) Petition for Rulemaking**

(a) Pursuant to this rule, any person may petition the Commission under Public Utilities Code Section 1708.5 to adopt, amend, or repeal a regulation. The proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct. ~~This rule does not authorize petitions to adopt, amend, or repeal Commission Rules of Practice and Procedure.~~

(b) Definitions. For purposes of this rule, (1) “industry division” means a division (or its successor, as designated by the Commission) whose function is to advise and otherwise assist the Commission in regulating a particular utility industry; and (2) “interested parties” means those persons on service lists identified by the Public Advisor’s Office and other persons who have an economic or other interest sufficient to warrant participation in a particular petition.

(c) Form and Content. A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. In addition, a petition must state whether the issues raised in the petition have, to the petitioner’s knowledge, ever been litigated before the Commission, and if so, when and how the Commission resolved the issues, including the name and case number of the proceeding (if known). A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument. Petitions must comply with all applicable requirements of Article 2 (Filing of Documents) of the Commission’s Rules of Practice and Procedure, and the caption of a petition must contain the following wording: “Petition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5.”

(d) Service and Filing. Petitions must be served upon the Executive Director, Chief Administrative Law Judge, Director of the appropriate industry division, Public Advisor and all known interested parties. Parties filing petitions must consult with the Public Advisor to identify a service list to be used to give persons generally interested in Commission rulemakings notice of the petition.

If a petition would result in the modification of a regulation adopted in a past Commission order or decision, then the petition must also be served on all



parties to the proceeding or proceedings in which the regulation that would be modified was adopted. The assigned Administrative Law Judge may direct the petitioner to serve the petition on additional persons.

(e) Responses and Replies. Responses to a petition must be filed and served on all parties who were served with the petition within 30 days of the date that the petition was served, unless the assigned Administrative Law Judge sets a different date. The petitioner and any other party may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses, unless the Administrative Law Judge sets a different date.

(f) The Commission's rules restricting ex parte communications and imposing reporting requirements do not apply to petitions for rulemaking.

(g) The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

Note: Authority Cited: Sections 1701 and 1708.5, Public Utilities Code. Reference: Section 1708.5, Public Utilities Code.

**(END OF APPENDIX A)**